

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)
VEI-01102/03

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at
(571) 272-3282.

Patent Number: 5,973,731 Application Number: 08/453,393
Issue Date: 10/26/1999 Filing Date: 05/30/1995

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent
number (or reissue patent number, if a reissue) and (2) the application number of the
actual U.S. application (or reissue application) leading to issuance of that patent to
ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above-identified patent:

☐ is a reissue of original Patent No. _____ original issue date _____ ;
original application number _____ ,
original filing date _____ .

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international
application _____ filed on _____ .

1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

| NOT Small Entity | | | Small Entity | | |
|-----------------------------------|-------------|--------|---|-------------|--------|
| Amount | Fee | (Code) | Amount | Fee | (Code) |
| <input type="checkbox"/> \$ _____ | 3 ½ yr fee | (1551) | <input type="checkbox"/> \$ _____ | 3 ½ yr fee | (2551) |
| <input type="checkbox"/> \$ _____ | 7 ½ yr fee | (1552) | <input checked="" type="checkbox"/> \$ 1,425.00 | 7 ½ yr fee | (2552) |
| <input type="checkbox"/> \$ _____ | 11 ½ yr fee | (1553) | <input type="checkbox"/> \$ _____ | 11 ½ yr fee | (2553) |

MAINTENANCE FEE BEING SUBMITTED \$ 1,425.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

☐ Enclosed is a check for the sum of \$ _____

☒ Please charge Deposit Account No. 07-1180 the sum of \$ 2125.00 .

☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 07-1180 .

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made please

☒ Credit to Deposit Account No. 07-1180

OR

☐ Send refund check

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

/Allen M. Krass/
Signature(s) of Petitioner(s)

May 23, 2012
Date

Allen M. Krass
Typed or printed name(s)

18,277
Registration Number, if applicable

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Address

(248) 647-6000
Telephone Number

ENCLOSURES:

- ☒ Maintenance Fee payment
- ☐ Statement why maintenance fee was not paid timely
- ☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
- ☐ Other: _____

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

/Allen M. Krass/
Signature

May 23, 2012
Date

Allen M. Krass
Typed or printed name

18,277
Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

The application for U.S. Patent No. 5,973,731 ('731) was originally filed by Inventor Barry Schwab on 30 May 1995. Subsequently the application was assigned to Ronald Thomas under an agreement that Mr. Thomas would form a corporation to exploit the patent and would assign an interest in the corporation to Schwab. Mr. Thomas further agreed that the corporation would be responsible for ensuring that all fees related to prosecution of the application, issuance and post-issuance were promptly remitted. Mr. Thomas engaged attorney Arnold S. Weintraub to prosecute the application. Inventor Schwab was not notified of the April 25, 2003 due date for the first maintenance fee on the '731 patent, but, Thomas arranged for it to be paid within the grace period. In the case of the second maintenance fee, Inventor Schwab again was not notified of the due date of the second maintenance fee; however, this time Thomas failed to submit payment of the second maintenance fee. Despite Mr. Thomas' agreement to pay all fees necessary to maintain the patent Mr. Schwab was not consulted or notified by Thomas regarding his decision to ignore the payment notice and reminders, therefore Mr. Schwab expected that the payment had been submitted as it had been for the first maintenance fee.

Shortly after this time, Mr. Schwab and Mr. Thomas became involved in a dispute with regard to the true ownership of this issued patent and several other issued patents. Thomas and his company, TS Holdings, Inc. sued Schwab in U.S. District Court for the Eastern District of Michigan as Case No. 4:09-cv-13632. It was during the discovery period of this action that Schwab became aware of Thomas' failure to pay the second maintenance fee, at which time Schwab requested that a Petition for Payment of Late Maintenance Fee be filed with the USPTO by the undersigned attorney. It was discovered at that time payment could not be submitted by the undersigned attorney in the absence of authority from the patent owner of record TS Holdings, Inc. However, in the Court's Order dated March 14, 2012, attached hereto, Schwab regained ownership of the subject patent and respectfully requests that the second maintenance fee be accepted and the '731 patent be reinstated.

(Please attach additional sheets if additional space is needed)